

**CHAPTER 12**  
**COMMERCIAL DRIVER DRUG AND ALCOHOL TESTING**  
**TABLE OF CONTENTS**

**INTRODUCTION**..... 12-3  
    History ..... 12-3  
    Office of Primary Interest..... 12-3  
    Designated Employer Representative ..... 12-3  
    Program..... 12-3  
    Other Testing..... 12-4  
**POLICY** ..... 12-4  
    Purpose ..... 12-4  
    General Policy ..... 12-4  
    Testing Procedures ..... 12-4  
**DEFINITIONS** ..... 12-4  
    Commercial Motor Vehicle ..... 12-4  
    Driver..... 12-5  
    Drugs..... 12-5  
    Medical Review Officer..... 12-5  
    Prohibited Conduct ..... 12-5  
    Refusal to Submit to a Test ..... 12-6  
    Safety Sensitive Function ..... 12-6  
    Substance Abuse Professional..... 12-7  
**PRE-EMPLOYMENT TESTING** ..... 12-7  
    Command Responsibilities ..... 12-7  
    Conditional Offer of Employment or Promotion ..... 12-7  
    Prohibition Against Driving ..... 12-8  
    Previous Employer Inquiry..... 12-8  
    Driver Education Materials ..... 12-8  
    Notification to Designated Employer Representative ..... 12-8  
**RANDOM TESTING**..... 12-9  
    Department of Personnel Administration Consortium..... 12-9  
    Policy..... 12-9  
    Command Responsibilities ..... 12-9  
**REASONABLE SUSPICION TESTING**..... 12-10  
    Command Responsibilities ..... 12-10  
    Reasonable Suspicion Determination..... 12-10  
    Supervisor Training ..... 12-10  
**POST TRAFFIC COLLISION TESTING**..... 12-10  
    Command Responsibilities ..... 12-10  
    Qualifying Collision ..... 12-11  
    Driver Availability..... 12-11

Alcohol Test.....	12-11
Drug Test.....	12-12
<u>RETURN TO DUTY PROCESS</u> .....	12-12
Command Responsibilities .....	12-12
<u>FOLLOW UP TESTING</u> .....	12-13
Command Responsibilities .....	12-13
Substance Abuse Professional Recommendations .....	12-13
<u>REPORTING AND REVIEWING OF TEST RESULTS</u> .....	12-13
Negative Test Results .....	12-13
Positive Test Results .....	12-13
Prohibited Conduct .....	12-13
<u>ALCOHOL PROHIBITIONS</u> .....	12-14
Prohibited Conduct .....	12-14
Alcohol Related Conduct .....	12-14
<u>RETENTION OF RECORDS</u> .....	12-14
Required Records.....	12-14
Security of Records .....	12-14
<u>COMPLIANCE INSPECTIONS</u> .....	12-15
Inspections of the Department’s Program .....	12-15

## CHAPTER 12

### COMMERCIAL DRIVER DRUG AND ALCOHOL TESTING

#### 1. INTRODUCTION.

a. History. On February 15, 1994, the United States Department of Transportation issued its final rule requiring drug and alcohol testing in the transportation industry. The rule requires employers to test commercial vehicle drivers for the illegal use of alcohol and controlled substances, and to prevent the drivers from operating a commercial vehicle when a driver engages in conduct prohibited under the regulations. The responsibility for the highway transportation portion of these regulations now rests with the Federal Motor Carrier Safety Administration (FMCSA). The State of California adopted the federal regulations by reference in Section 34520 of the California Vehicle Code.

b. Office of Primary Interest. The California Highway Patrol (CHP) operates commercial vehicles and, as an employer of commercial drivers, conducts a controlled substances and alcohol testing (CSAT) program which complies with the statute. Enforcement and Planning Division, Commercial Vehicle Section (CVS) is the office of primary interest for CSAT of the Department's commercial vehicle drivers.

c. Designated Employer Representative. Within CVS, an individual is assigned to ensure commercial driver CSAT activities of the Department are in compliance with state and federal CSAT requirements. This individual is the Department's CSAT Coordinator, also identified in regulation as a designated employer representative (DER). The DER is the liaison between the CHP and the California Department of Human Resources (CalHR). The DER receives random selection notifications and test results, notifies the affected commands, maintains required records, and ensures the Department remains in compliance with the CSAT regulations. The DER is available as a resource for supervisors and drivers for further information regarding the CSAT requirements. The DER may be contacted at CVS, (916) 843-3400.

d. Program. Title 49, Code of Federal Regulations (49 CFR) Part 40 and Part 382 require employers of commercial vehicle drivers to conduct pre-employment, post-collision, reasonable suspicion, and random CSAT. Employers must remove drivers from driving duties when they have engaged in prohibited conduct. Additionally, the regulations provide for return-to-duty and follow-up testing for drivers who have engaged in prohibited conduct, when the driver and the Department enter into an agreement to return the driver to the performance of driving functions.

e. Other Testing. In response to the federal requirements, CalHR was directed to provide assistance and coordination in this matter. The requirements of this chapter are in addition to, and separate from, any other departmental drug and alcohol testing programs.

## 2. POLICY.

a. Purpose. The purpose of this policy is to establish programs designed to help prevent collisions and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

b. General Policy. All drivers required to have a commercial driver license are subject to the controlled substance and alcohol testing rules. This would include all drivers who:

(1) Are in a classification that requires the possession of a commercial driver license and drive a commercial motor vehicle. Currently, those classifications are Heavy Truck Driver and Telecommunications Facilities Technician II.

(2) Are receiving a pay differential or any other additional compensation from the state because they have a commercial driver license.

(3) Possess a commercial driver license and periodically drive a commercial vehicle for the Department and remain in the federal testing program during their non-driving periods. This includes supervisors who are in possession of a commercial driver license and remain in readiness to drive in the event of an emergency.

c. Testing Procedures. All testing procedures relative to commercial driver CSAT requirements shall be conducted in conformance with 49 CFR, Part 382 and Part 40.

NOTE: Peace officers as defined in Section 830.1 or 830.2 of the Penal Code who are authorized to drive vehicles described in Section 34500 of the Vehicle Code are exempted from this policy provided they are participating in a substance abuse detection program within the scope of their employment. Currently, buses operated by the Academy and fuel trucks operated as a part of Air Operations are driven exclusively by such peace officers.

## 3. DEFINITIONS.

a. Commercial Motor Vehicle. A motor vehicle or combination of vehicles used in commerce to transport passengers or property if the motor vehicle:

- (1) Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- (2) Has a gross vehicle weight rating of 26,001 or more pounds; or
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Material Transportation Act and which requires the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, subpart F), regardless of vehicle size.

b. Driver. Any person who operates a commercial motor vehicle.

c. Drugs. Marijuana, cocaine, amphetamines, opiates, phencyclidine (PCP). These are the only drugs permitted to be tested for under the commercial driver CSAT regulations.

d. Medical Review Officer. The Medical Review Officer (MRO) is a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program. The MRO shall have knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate a confirmed positive test result, taking into consideration factors such as medical history and other relevant biomedical information.

e. Prohibited Conduct. A driver has engaged in prohibited conduct when:

- (1) The driver receives a positive drug test result verified by an MRO.
- (2) The driver refuses to submit to a required test.
- (3) The driver is found to have an alcohol concentration of 0.04% or greater.
- (4) The driver uses alcohol while on duty or within four hours prior to performing a safety sensitive function (SSF).
- (5) The driver uses a drug, as defined in this chapter.

NOTE: Nothing in this section precludes the Department from taking adverse action against any employee reporting for duty with any measurable blood alcohol concentration (BAC), or with alcohol on the breath, pursuant to Highway Patrol Manual (HPM) 10.3, *Personnel Transactions Manual*, Chapter 14, *Inconsistent and Incompatible Activities*.

f. Refusal to Submit to a Test.

- (1) Fail to appear for any test within a reasonable time, as determined by the Department, after being directed to do so.
- (2) Fail to remain at the testing site until the testing process is complete.
- (3) Fail to provide a urine specimen for any drug test required by federal regulations. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen.
- (4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen.
- (5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
- (6) Fail or declines to take a second test the Department or collector has directed the driver to take.
- (7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the Department.
- (8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, or behave in a confrontational way that disrupts the collection process).
- (9) Is reported by the MRO as having a verified adulterated or substituted test result.

g. Safety Sensitive Function. This term includes all duties (identified below) that occur during work hours. Safety-sensitive functions shall include:

- (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- (2) All time inspecting equipment or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

h. Substance Abuse Professional. A licensed physician (medical doctor or doctor of osteopathy), a licensed or certified psychologist, social worker, employee assistance professional, or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

#### 4. PRE-EMPLOYMENT TESTING.

a. Command Responsibilities. The affected command is responsible for the following activities.

(1) A pre-employment drug test for each driver hired or promoted to a commercial driving classification. Pre-employment alcohol testing is not required under the regulation, and shall not be performed.

(2) Ensure the driver does not perform SSF until a negative test result is received.

(3) Obtain the driver's signature on previous employer inquiry forms and conduct a previous employer inquiry.

(4) Ensure drivers receive a copy of driver education materials.

(5) Notify the DER upon appointment or termination of a commercial driver.

b. Conditional Offer of Employment or Promotion. All applicants for a commercial driver position shall be offered a conditional offer of employment or promotion to a commercial vehicle driving position, contingent on the submission to a pre-employment drug test and receipt of a negative test result. See HPM 10.3, Chapter 2, regarding conditional offers of employment. Pre-employment drug test results are sent to the DER who in turn notifies the affected command of the

driver's test result. The driver is authorized to operate commercial vehicles once a negative test result is obtained.

c. Prohibition Against Driving. Drivers shall not perform a SSF for the Department prior to submitting to a pre-employment drug test, and having a negative result obtained from an MRO. A short driving skills demonstration in an unladen vehicle to determine the applicant's ability to operate the vehicle adequately may be performed prior to obtaining a drug test result.

d. Previous Employer Inquiry. As soon as possible upon hiring or promoting a driver to perform a SSF, a unique previous employer background investigation must be conducted. This inquiry is in addition to, and separate from, the CHP 420, *Applicant Drug History Questionnaire - Nonuniformed*. Each previous employer of the driver for the two years prior to the hiring or promotion must be contacted and an inquiry made into any prohibited conduct the driver may have engaged in. The driver shall be asked directly if they have engaged in any prohibited conduct. Information regarding the driver's previous employers may be found on the driver's employment application. The driver must sign a unique release of information waiver specific to each previous employer, authorizing the CHP to receive the information. This waiver is available from the DER. These unique previous employer inquiry forms are available from the DER. The driver is not permitted to perform a SSF for the Department after more than 30 days have elapsed since the hiring or promotion of the driver unless each response to the previous employer inquiries, or documentation of the Department's good faith effort to obtain each response, is on file with the DER. Drivers shall not perform a SSF if the result of any previous employer inquiry indicates the driver engaged in prohibited conduct, without documentation of the successful completion of the return-to-duty process.

e. Driver Education Materials. Drivers must receive educational materials explaining the fundamental requirements of CSAT and associated regulations. This information is available in the form of a booklet entitled *Drug and Alcohol Testing: Driver Awareness Training, Driver Handbook*. Copies of this booklet are available from the DER. Each driver subject to CSAT shall be issued a copy of the booklet upon hiring or promotion to commercial driver status. The first page of the booklet is a certificate of receipt, certifying that the driver has received a copy. Supervisors shall forward a copy of the certificate of receipt, signed by each driver, to the DER.

f. Notification to Designated Employer Representative. Upon hiring or promotion of an employee to a driving position, the affected command shall notify the DER of the new driver's status immediately. The DER shall notify CalHR of the addition of a new driver to the random selection pool. When a driver is removed from a driving position the affected command shall notify the DER in order to have the driver removed from the random selection pool. Copies of all receipts and records

associated with the pre-employment testing process are to be forwarded to the DER.

## 5. RANDOM TESTING.

a. The California Department of Human Resources Consortium. The CalHR serves as the administrator for the consortium that will provide drug/alcohol testing services for the Department's commercial driver drug testing program.

b. Policy. Each year, a number of drugs tests that equals fifty percent (50%) of the drivers in the CalHR random selection pool will be conducted on drivers who are randomly selected from the pool. In addition, a number of alcohol tests that equal ten percent (10%) of the number of drivers in the CalHR random selection pool will be conducted on drivers who are randomly selected from the pool. The CalHR will randomly select driver names using the ASSISTANT computer software program.

c. Command Responsibilities. The affected command is responsible for the following activities:

(1) Ensure that drivers selected for random testing proceed immediately to the testing site once they are notified of being selected. Supervisors shall ensure drivers are not made aware of the test prior to being sent for testing.

(2) Drivers shall only be tested for alcohol while they are performing safety sensitive functions, immediately prior to performing or immediately after performing safety-sensitive functions.

(3) Drivers will provide urine specimens (for drug tests) and take breath alcohol tests for the random testing program during any hours the driver is expected to perform a SSF. Drivers whose regularly scheduled work shift occurs outside of the designated collection site's normal hours of operation may be held after shift to be tested, or the Department may make other arrangements to have them tested. Urine samples shall be collected in accordance with the procedures prescribed in federal regulation. Collection sites where drug tests may be conducted are available throughout the state through the CalHR's contracted CSAT service provider.

(4) In no event shall a driver be called in for the purpose of participating in a random test while the driver is on vacation, regular days off, sick leave, compensated time off, or other leave status. In such a case, the driver's supervisor shall notify the DER immediately. The DER shall notify CalHR to ensure the random selection is adjusted to guarantee an adequate annual sampling.

## 6. REASONABLE SUSPICION TESTING.

a. Command Responsibilities. The affected command is responsible for the following activities:

- (1) Initiate a reasonable suspicion drug test for each driver when circumstances warrant.
- (2) Ensure supervisors have been trained to make reasonable suspicion testing determinations.
- (3) Forward documentation of reasonable suspicion determination and copies of associated records to DER.

b. Reasonable Suspicion Determination. Drivers will be required to submit to a reasonable suspicion drug test and/or breath alcohol test as required under federal regulation. Supervisors of commercial vehicle drivers shall make a determination to require a reasonable suspicion test based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. Supervisors shall interview the driver and document their reasons for the determination of reasonable suspicion. Documentation of the reasonable suspicion determination shall be forwarded to the DER upon completion.

c. Supervisor Training. Supervisors of commercial vehicle drivers shall receive at least one hour training in recognition of signs of drug use and at least one hour training in recognition of signs of alcohol abuse. This training is available through the CalHR's contracted CSAT service provider. Supervisors may contact the DER for instructions and authorization for the training. The training is through the Internet, so the supervisor must be afforded the use of a computer with Internet capabilities. Training must take place within 30 days of promotion to supervisor. Documentation of the training shall be forwarded to the DER upon completion.

## 7. POST TRAFFIC COLLISION TESTING.

a. Command Responsibilities. The affected command is responsible for the following activities:

- (1) Following a traffic collision, determine if the conditions exist to require a driver to submit to a post-collision test.
- (2) Ensure the driver is tested for alcohol within two hours of the qualifying collision.

(3) Ensure the driver is tested for drugs within 32 hours of the qualifying collision.

(4) Supervisors shall ensure that drivers who are required to submit to post-collision tests are provided with post collision information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the regulations.

b. Qualifying Collision. A driver who is in a traffic collision involving a commercial vehicle shall be tested for alcohol and controlled substances if the following conditions exist:

Type of Collision	Was the driver cited?	Employer must test
Fatal (Someone died from the collision)	Yes	Yes
Fatal (Someone died from the collision)	No	Yes
Injury (Someone required medical help away from the scene)	Yes	Yes
Injury (Someone required medical help away from the scene)	No	No
Disabling Damage (One or more vehicles required towing)	Yes	Yes
Disabling Damage (One or more vehicles required towing)	No	No

c. Driver Availability. A driver who is subject to post-collision testing must remain available for CSAT testing, or the Department may consider the driver to have refused to submit to testing. The involved driver must also refrain from consuming alcohol for eight hours following the collision, or until the driver submits to an alcohol test, whichever comes first.

d. Alcohol Test. Drivers should be tested for alcohol within two hours of the qualifying collision. If not tested within two hours, supervisors must document the reason why. Every effort must be made to administer an alcohol test to the driver within eight hours following the qualifying collision. If not tested within eight hours, supervisors must stop trying to administer an alcohol test, and document the reason why the test was not administered.

e. Drug Test. Every effort must be made to drug test the driver within 32 hours following the qualifying collision. If not tested within 32 hours, supervisors must stop trying to conduct a drug test, and document the reason why the test was not conducted.

## 8. RETURN-TO-DUTY PROCESS.

a. Command Responsibilities. The affected command is responsible for the following activities.

(1) Ensure a driver who has engaged in prohibited conduct is prevented from operating a commercial vehicle until the return-to-duty process has been successfully completed.

(2) Provide the names and contact information for substance abuse professional (SAP) referrals to any driver who has engaged in prohibited conduct. This information is available through the CalHR's contracted service provider.

(3) Should the Department and the driver agree to participate in the return-to-duty process, the driver must:

(a) Be evaluated by a SAP in a face-to-face interview.

(b) Successfully complete all treatment as directed by the SAP.

(c) Be reevaluated by the SAP in a face-to-face interview.

(d) Submit to a return-to-duty drug and/or alcohol test and obtain negative results. Prior to the return-to-duty test, the SAP must provide documentation to the Department that the driver has successfully complied with all treatment recommendations. The driver may return to performing a SSF once the negative test results are obtained.

(e) Agree to submit to follow-up testing as prescribed by the SAP. This will include a minimum of six unannounced follow-up tests within the first 12 months. The driver shall also comply with any other follow-up treatment recommended by the SAP.

9. FOLLOW-UP TESTING.

a. Command Responsibilities. The affected command is responsible to ensure that drivers selected for follow-up testing proceed immediately to the testing site upon notification of being selected. Supervisors shall ensure drivers are not made aware of the test prior to being sent for testing.

b. Substance Abuse Professional Recommendations. Following the return-to-duty testing, the driver will be subject to a minimum of six unannounced follow-up alcohol and/or drug tests during the first twelve months following the drivers return to work. The SAP may prescribe more than the minimum number of follow-up tests. Any additional testing or treatment recommended by the SAP will be specified in the driver's last chance agreement.

10. REPORTING AND REVIEWING OF TEST RESULTS.

a. Negative Test Results. Should the test results come back negative the MRO shall immediately notify the DER. The DER shall notify the affected command as soon as possible.

b. Positive Test Results. Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the individual an opportunity to discuss the test results. The MRO shall contact the individual directly, on a confidential basis, to determine whether the driver wishes to discuss the test results. If after making all reasonable efforts and documenting them, the MRO is unable to reach the driver, the MRO shall contact the DER, following the criteria outlined in federal regulation.

(1) Once a MRO has notified a driver of a confirmed positive drug test, the driver, at their own expense, may request a reanalysis of the original sample as long as the request is made within 72 hours. Once the driver submits their request within the 72 hour time frame, the MRO shall direct, in writing, the reanalysis of the original sample.

(2) The MRO may report controlled substances test results to the employer by any means of communication; however, a signed, written notification shall be forwarded within three days from the date the MRO verifies the results.

c. Prohibited Conduct. Once the affected command has been notified a driver had engaged in prohibited conduct, the driver must be prevented from performing a SSF for the Department until the return-to-duty process has been successfully completed.

## 11. ALCOHOL PROHIBITIONS.

a. Prohibited Conduct. Use of alcohol is not permitted while on duty, driving a commercial vehicle, or within four hours prior to driving a commercial vehicle. When a driver has an alcohol test result with an alcohol concentration of 0.04% or more, the driver has engaged in prohibited behavior and shall not be permitted to drive a regulated vehicle until the driver has successfully completed the return-to-duty process.

b. Alcohol Related Conduct. When a driver has an alcohol test result with an alcohol concentration of 0.02% or greater, but less than 0.04%, the driver shall not be permitted to drive a regulated vehicle until at least 24 hours have elapsed since the test. Under this circumstance, the driver is not subject to the return-to-duty process.

NOTE: Nothing in this section precludes the Department from taking adverse action against any employee reporting for duty with any measurable BAC, or with alcohol on the breath, pursuant to HPM 10.3, Chapter 14.

## 12. RETENTION OF RECORDS.

a. Required Records. Records which will be maintained include:

- (1) Records related to the collection process.
- (2) Records related to the driver's test results.
- (3) Documentation of any other violations of controlled substance use or alcohol misuse rules.
- (4) Records related to evaluations.
- (5) Records related to education and training.
- (6) Administrative records related to alcohol and controlled substances testing.

b. Security of Records. All records shall be maintained in a secure location with limited access. A legible copy of all records identified above shall be forwarded to the DER as soon as possible after the event which generated the record. Additionally, records shall be made available for inspection within two business days after a request has been made by an authorized representative of the Department or the FMCSA. Specific records may be maintained on the computer, provided the records can be converted to printed documentation in a rapid and readily auditable manner at the request of authorized personnel.

### 13. COMPLIANCE INSPECTIONS.

a. Inspections of the Department's Program. As with any other motor carrier whose principle place of business is in California, the Department's own CSAT program is regularly audited by departmental Motor Carrier Safety Operations personnel. The Department's CSAT records and compliance with federal regulations are inspected and assigned a safety compliance rating of Satisfactory or Unsatisfactory. These ratings are a matter of public record. It is the responsibility of all involved personnel, beginning with the DER, and including all drivers, supervisors, managers, and commanders, to ensure the Department's record consistently reflects the highest possible level of safety compliance concerning CSAT.

THIS PAGE INTENTIONALLY LEFT BLANK